

**REMARKS**

**I. Status of the Claims**

Claims 1-12, 16-36, 38-40, 44-50 and 53 are pending in this application. Claims 4 and 27-49 have been withdrawn from consideration by the Examiner. Claims 13-15, 37, 41-43, 51 and 52 have been canceled herein without prejudice or disclaimer. Claims 1, 50, and 53 have been amended herein to include the limitation that the at least one amphoteric polymer is chosen from polyquaternium-22. Claim 27 has been amended to include the limitations of at least one cationic polymer and at least one amphoteric polymer is chosen from polyquaternium-22. Support for these amendments can be found in original claim 15 and Examples 1 through 4 of the present application. Claim 38 has been amended to correct the claim dependency. Claim 44 has been amended to correct a typographical error.

Accordingly, no new matter has been added by these amendments.

Applicants respectfully remind the Examiner of his duty to examine the withdrawn claims upon the determination of allowable subject matter.

Applicants wish to thank the Examiner for the courtesies extended to their undersigned representative during the personal interview conducted on May 26, 2004. The amendments and remarks herein expand further on the arguments presented during that interview.

**II. Rejection Under 35 U.S.C. § 103**

Claims 1-3, 5-26, and 50-52 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,799,456 ("*Dubief*") in view of U.S. Patent No.

5,656,258 ("*Cauwet*") and U.S. Patent No. 5,958,392 ("*Grollier*") for the reasons set forth on pages 2-4 of the November 12, 2003, Office Action. Specifically, the Examiner cites *Dubief* for teaching a composition comprising "ceramide compounds and a cationic polymer." *Id.* at 3. The Examiner admits that "Dubief does not teach expressly the employment of amphoteric polymer in the composition." *Id.* Thus the Examiner relies on *Cauwet* and *Grollier* to cure the deficiencies of *Dubief*. The Examiner contends that it would have been obvious to have modified the compositions of *Dubief* by the addition of the amphoteric polymer of *Cauwet* or *Grollier*. See November 12, 2003, Office Action at 4.

Applicants respectfully traverse for at least the reason that the Examiner has failed to establish a prima facie case of obviousness. In particular, the references cited by the Examiner in the current rejections do not teach or suggest all of the claim limitations as presently amended, nor is there any suggestion or motivation, either in the cited references or in the knowledge generally available to one of ordinary skill in the art, to modify or combine references. See M.P.E.P. § 2143.

Independent claim 1, as amended, recites

A composition comprising:  
    at least one compound chosen from ceramides and  
glycoceramides,  
    at least one cationic polymer, and  
    at least one amphoteric polymer chosen from  
polyquaternium-22,  
wherein the weight ratio of said at least one cationic polymer  
to said at least one amphoteric polymer is greater than or  
equal to 3:1.

Applicants respectfully contend that neither *Dubief* in view of *Grollier*, nor *Dubief* in view of *Cauwet*, nor all three references combined, render the present application obvious.

All three references combined do not teach or suggest all of the claim limitations as presently amended. Moreover, the references do not provide any motivation for one of ordinary skill in the art to arrive at the presently claimed composition.

The Examiner cites *Grollier* for its teaching of a combination of a cationic polymer with an amphoteric polymer. Specifically, the Examiner points out that among the amphoteric polymers that *Grollier* discloses “copolymers of acrylic acid and dialkylaminoalkyl acrylamide” are included. November 12, 2003, Office Action at 3. However, such a statement is irrelevant with respect to the presently amended application, because *Grollier* does not teach amphoteric polymers of diallyldimethylammonium chloride/acrylic acid type. In other words, *Grollier* does not teach the at least one amphoteric polymer being chosen from polyquaternium-22 as is presently claimed.

The Examiner cites *Cauwet* for teaching “that polyquaternium-22, or MERQUAT 280 is a known amphoteric copolymer of acrylic acid and dialkylaminoalkyl acrylamide.” November 12, 2003, Office Action at 4. Applicants agree with the Examiner that *Cauwet* teaches polyquaternium-22 as an amphoteric polymer. However, Applicants respectfully point out that the Examiner is factually incorrect in stating that polyquaternium-22 is a copolymer of acrylic acid and dialkylaminoalkyl acrylamide. As is taught both in *Cauwet*, and in the present specification as filed, polyquaternium-22 is a **diallyldimethylammonium chloride/acrylic acid copolymer**. Thus, the disclosure of *Grollier* does not motivate one to chose the amphoteric polymers of *Cauwet*.

Further, the Examiner cannot just stop at *Cauwet*’s teaching of amphoteric polymers. A reference should be considered as a whole, and portions arguing against

or teaching away from the claimed invention must also be considered. See *Bausch & Lomb, Inc. v. Barnes Hind/Hydrocurve, Inc.*, 796 F.2d 443 (Fed. Cir. 1986). The entire teaching of Cauwet is of cationic polymers in combination with at least one amphoteric polymer chosen from polyquaternium-22, wherein **the ratio of the cationic polymer to the amphoteric polymer is equal to or less than 1**. Thus, Cauwet teaches away from the present claims, which require that the weight ratio of the at least one cationic polymer to the at least one amphoteric polymer is greater than or equal to 3:1.

As discussed above, Dubief does not teach amphoteric polymers, Grollier does not teach at least one amphoteric polymer chosen from polyquaternium-22, and *Cauwet* expressly requires that the weight ratio of its at least one quaternary polyammonium polymer (a) to its at least one polymer (b) containing diallyldialkylammonium units be less than 1. See *e.g.*, Cauwet Abstract. Thus, the cited references, when combined as proposed by the Examiner, fail to teach or suggest all of the limitations of claim 1. Moreover, there can be no rational argument made that one of ordinary skill in the art would be motivated to arrive at the presently claimed invention based on the disclosures of *Dubief*, *Grollier* and *Cauwet*.

Similarly, independent claim 53 is drawn to a pretreatment composition comprising at least one compound chosen from ceramides and glycoceramides, at least one cationic polymer, and at least one amphoteric polymer chosen from polyquaternium-22, wherein said pretreatment composition is not a dyeing composition, a bleaching composition, a permanent waving composition, a relaxing composition, or a straightening composition, wherein the weight ratio of the at least one cationic polymer to the at least one amphoteric polymer is greater than or equal to 2:1, and wherein the

pH of the pretreatment composition is greater than or equal to about 4. Neither *Cauwet* nor *Grollier* teaches or suggests a pretreatment composition (1) wherein the at least one amphoteric polymer is chosen from polyquaternium-22, (2) which is not a dyeing composition, a bleaching composition, a permanent waving composition, a relaxing composition, or a straightening composition, (3) wherein the weight ratio of at least one cationic polymer to at least one amphoteric polymer is greater than or equal to 2:1, and (4) wherein the pH of the pretreatment composition is greater than or equal to about 4.

See e.g., *Cauwet's* Abstract and *Grollier* column 2, line 20 to column 6, line 20.

Accordingly, the cited references, when combined as proposed by the Examiner, fail to teach or suggest all of the limitations of claim 53.

With respect to the multi-compartment kit of claim 50, the Examiner asserts that "making a kit comprising the composition herein and other hair treating composition, such as hair dyeing composition is obvious to one of ordinary skill in the art because such composition is known to be particularly useful before or after other hair treatment." See November 12, 2003, Office Action at 4. Applicants respectfully disagree. Nowhere do any of the cited references teach, suggest, or even mention a kit, let alone a kit comprising, in a second compartment, an oxidizing composition. Accordingly, even if the proposed combination of the references were made, Applicants respectfully submit that the requisite objective teaching or suggestion to further modify the combined teachings to form a kit is not present in the references.

For at least the foregoing reasons, Applicants respectfully request the withdrawal of these § 103(a) rejections.

**III. Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration of the pending claims and reexamination of the application. The timely allowance of the pending claims is respectfully requested.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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